IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10494 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALPESH DHIRUBHAI WAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10494 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/01/2003

ORAL JUDGEMENT

#. By way of this petition, the detenu has challenged his detention order dated 14.5.2002. By the impugned

order, the detenu is detained in exercise of the powers conferred under Section 3(1) of the Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short).

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is reference of four criminal cases. Those particulars are at serial nos.1, 2, 3 and 4 in the grounds of detention. The aforesaid four cases relate to theft of certain vehicles as mentioned in the detention order. It is not in dispute that, such complaints were filed against four accused and the detenu is one of such accused. On the identical ground and on the basis of identical criminal cases, one of the detenu has moved this Court by way of Special Civil Application No.5799 of 2002. The detenu of the aforesaid special civil application and the present detenu are the co-accused in the aforesaid four cases.

#. Mr.Pancholi, learned AGP, after taking instructions from the concerned officer, who is personally present in the Court, has confirmed the aforesaid aspect and said that the facts of the aforesaid special civil application are identical to the facts of the present case. So far as earlier special civil application is concerned, this Court has released the detenu by observing in paras 3 and 4 as under.:

> "3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon four offences registered against the detenu under Section 379 of Indian Penal Code. The learned advocate for the petitioner has further submitted that the last offence is registered against the petitioner detenu before the Varachha Police Station vide CR No. 121 of 2002 for the offences under Section 379 of Indian Penal Code which has been registered on 31-3-2002 and the detaining authority has passed the impugned order of detention on 14-5-2002 and therefore, according to the learned advocate for the petitioner detenu, there is a delay in passing the impugned order of detention.
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> 4. I have heard learned advocate for the petitioner at length and learned AGP for the respondents. I have also perused the material on

record. Learned advocate for the petitioner has stated that the last offence has been registered against the petitioner detenu before the Varachha Police Station vide CR No. 121 of 2002 for the offences under Section 379 of Indian Penal Code which has been registered on 1-4-2002 and the detaining authority has passed the impugned order of detention on 14-5-2002 and therefore, according to the learned advocate for the petitioner detenu, there is a delay of about one and half months in passing the order. Learned AGP has fairly admitted the same. In support of the arguments, learned advocate for the petitioner detenu has relied upon a judgement delivered by this Court reported in 1997 (1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under :

"There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 AND Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993 (2) Suppl. SCC 61."

#. Since the facts of this petition are identical to the facts of the above referred special civil application, being Special Civil Application No.5799 of 2002, this petition deserves to be allowed and the same is accordingly allowed. The order of detention dated 14.5.2002 is quashed and set aside. The detenu Alpesh Dhirubhai Vaghela is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)